Social and Community Services Pay Equity Special Account Bill 2012 [and] Social and Community Services Pay Equity Special Account (Consequential Amendments) Bill 2012

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Social and Community Services Pay Equity Special Account Bill 2012 [and] Social and Community Services Pay Equity Special Account (Consequential Amendments) Bill 2012

Date introduced: 10 October 2012
House: House of Representatives
Portfolio: Families, Housing, Community Services and Indigenous Affairs
Commencement: Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech for the Social and Community Services Pay Equity Special Account Bill 2012 and the links to the Bill, its Explanatory Memorandum and second reading speech for the Social and Community Services Pay Equity Special Account (Consequential Amendments) Bill 2012 can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

These Bills establish a special account under the Financial Management and Accountability Act 1997 to provide for the Commonwealth’s agreed funding for pay increases awarded to employees in the social and community sector, and specify what programs or arrangements are to receive additional funding.

Background

The need for this Bill arises from a decision of Fair Work Australia on 1 February 2012 in relation to the wage rates of employees in the social and community services sectors. The Government announced on 15 July 2012 that it would provide around $3 billion to supplement the community sector’s capacity to meet the costs of the decision, because many of the services are partly Commonwealth funded.

Following that announcement, the Commonwealth undertook further analysis of the cost of providing supplementation to the social and community sector using data from the Social Policy Research Centre (SPRC) Survey of 2011. The final amount of supplementation arrived at from that process was $2.8 billion.

4. J Collins (Minister for Community Services) et. al., Social and community services sector equal remuneration update, 10 October 2012, viewed 25 October 2012, http://us2.campaign-archive2.com/?u=fd899ebe99e7a7ab04a1b1231&id=8a7f410147

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The Bills transfer $2.8 billion to a special account within the meaning of the *Financial Management and Accountability Act 1997* (the FMA Act)\(^5\), from which they are to then be drawn for the purpose supplementing the various programs funded in whole or in part by the Commonwealth.

The principal Bill provides three mechanisms through which monies are to be expended:

- specific programs listed in the *Financial Management and Accountability Regulations 1997*\(^6\), made under section 32B of the FMA Act will receive additional funding
- grants to the states and territories through the COAG Reform Fund will be increased and
- programs established under specific Commonwealth legislation will receive supplementation.

### Committee consideration

The Senate Selection of Bills Committed decided not to refer these Bills to committee.\(^7\) The Joint Standing Committee on Human Rights has not yet considered the Bills.

### Policy position of non-government parties/independents

During debate in the House Kevin Andrews expressed concerns about the speed at which the Government had sought to have the Bills passed through that chamber. While the Coalition did not oppose the Bills in the House, Mr Andrews suggested that this would not necessarily be the case in the Senate.\(^8\) Media reports also indicated that the Coalition had not determined what position it would take on the Bills in the Senate.\(^9\)

At the time of this Digest, the minor parties and independents have not expressed a view on whether they will support the Bills in the Senate.

### Major interest groups

Fair Work Australia’s decision has been widely supported by the community sector. For example, the Australian Council of Social Service (ACOSS) said:

ACOSS joined in the chorus of voices welcoming Fair Work Australia’s decision for equal pay for our vital workers. ACOSS joined the Day of Action organised by the Australian Services Union to

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raise awareness of the issue and maintain the pressure on commitments for funding to cover
decent wages in the sector.10

Further, the Australian Human Rights Commissioner, Ms Elizabeth Broderick, said:

this historic decision will make a real difference to these workers and their families. The first ever
successful claim for an equal remuneration order in the national system also means a significant
advance for equal pay for women.11

Financial implications

Additional funding of $2.1 billion for the supplementation was provided for in the 2011–12 Mid-year
Economic and Fiscal Outlook (MYEFO).12 That funding was not broken down into specific years,
however, and MYEFO merely listed the annual amounts as ‘not for publication’ and advised that, as
Fair Work Australia’s final decision had not been handed down, funding had been included in the
contingency reserve.13

The Government announced a further $1 billion in funding on 15 July 2012; taking to total
Commonwealth commitment to $3 billion. The amount allocated to the special account by these Bills,
however, is only $2.8 billion; reflecting the revisions to the costing.

A further $29.9 million was announced in the 2012–13 Budget in order to fund the Queensland
Industrial Relations Commission’s decision in relation to social and community services employees
who were transferred to the Fair Work Act regime on 1 January 2010.14

Section 6 of the principal Bill provides that funding must be allocated to the account according to the
following schedule:

<table>
<thead>
<tr>
<th>Credits to the Account</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Item</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
</tbody>
</table>

13. Ibid., p. 181.
Credits to the Account

<table>
<thead>
<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2 Amount to be credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>1 July 2016</td>
<td>$309.4 million</td>
</tr>
<tr>
<td>6</td>
<td>1 July 2017</td>
<td>$368.7 million</td>
</tr>
<tr>
<td>7</td>
<td>1 July 2018</td>
<td>$431.4 million</td>
</tr>
<tr>
<td>8</td>
<td>1 July 2019</td>
<td>$491.1 million</td>
</tr>
<tr>
<td>9</td>
<td>1 July 2020</td>
<td>$554.5 million</td>
</tr>
</tbody>
</table>

Special appropriations

These Bills do not appropriate any monies. However, the establishment of a special account by the Bills will activate the standing appropriation mechanism for special accounts under subsection 21(1) of the FMA Act.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\(^{15}\)

Key issues and provisions

Social and Community Services Pay Equity Special Account Bill 2012

Clause 5 of the Bill establishes the Social and Community Services Pay Equity Special Account as a special account within the meaning of section 21 of the FMA Act. Being a special account, section 21 of the FMA Act provides the standing appropriation from which the account will be credited.

Clause 6 of the Bill provides a schedule of amounts to be credited to the special account each year until 1 July 2020.

Clause 7 provides for the purposes of the special account. Subclauses 7(2) and 7(3) provide that a purpose of the special account is to assist employers that are affected by a pay equity order, and employers that are receiving specified Commonwealth funding in order to meet the costs of the pay equity order.

The programs to which additional funding is to be provided under clause 7 are listed in Schedule 1 and Schedule 2 of the Bill. Subclauses 7(4) and 7(5) provide that the Minister may, by written instrument, alter the programs in Schedule 1 and Schedule 2. However, Clause 9 (discussed below) substitutes a different mechanism of disallowing any amendments to the schedules to that which is usually provided by the Legislative Instruments Act 2003.\(^{16}\)

\(^{15}\) The Statement of Compatibility with Human Rights can be found at page 18 of the Explanatory Memorandum to the Bill.

Clause 8 deals with payments under the COAG Reform Fund Act 2008. Strictly speaking, payments under the COAG Reform Fund Act are grants to the states and territories. However, much of the funding provided under that Act is for the specific outcomes or programs that are, ultimately, delivered by the social and community sector under agreements with the Commonwealth, states and territories. This section increases certain amounts to be paid by the Commonwealth to the states and territories in order to maintain the Commonwealth’s funding level in real terms for those programs, given the effect of the Fair Work Australia decision. This is achieved by a direction by the Minister crediting amounts from the Account to the COAG Reform Fund (subclause 8(1)). A direction under subclause 8(1) is not a legislative instrument, and therefore is not disallowable by Parliament (subclause 8(6)). The specific programs that are to receive increased funding are outlined in Schedule 3 of the Bill. Schedule 3 may be amended by the Minister by written instrument, but again, clause 9 of the Bill provides a different mechanism for disallowing a change to the schedule than that which usually applies under the Legislative Instruments Act. Written instruments made under subclauses 7(4) or 8(7) altering the Schedules are legislative instruments, but will not be disallowable under section 42 of the Legislative Instruments Act.

Clause 9 effectively reduces the time available to disallow a legislative instrument made under the Bill from 15 sitting days—which would be the case had section 42 of the Legislative Instruments Act applied—to five sitting days. Further, the clause allows a disallowed instrument to be remade if it is disallowed, without the restrictions on remaking a disallowed instrument that apply under sections 46 to 48 of the Legislative Instruments Act. There are several implications of these variations from the procedures of the Legislative Instruments Act:

- first, human rights compatibility statements will not be required and

- second, the normal six month cooling-off period during which a legislative instrument that is the same in substance as a disallowed instrument may not be made, which would apply under the Legislative Instruments Act, will not be applicable.

Clause 10 provides that the entire Act will expire on 30 June 2021. By this time all payments will have been made from the special account.

Social and Community Services Pay Equity Special Account (Consequential Amendments) Bill 2012

This Bill amends the COAG Reform Fund Act 2008 by inserting a note about the principal Bill in section 5.

Concluding comments

This Bill continues a recent pattern within Commonwealth financial legislation of seemingly reducing opportunities for specific expenditure programs to be scrutinised. Following the High Court’s decision in Williams v Commonwealth, the Government enacted the Financial Framework Legislation Amendment Act (No. 3) 2012, which authorised—through the Financial Management and Accountability Regulations 1997—hundreds of expenditure programs with little parliamentary scrutiny,
including those dealt with in this Bill. Provisions of these Bills allow monies to be directed at expenditure programs without regard to those programs’ compatibility with human rights principles. Moreover, the alteration of the disallowance mechanisms means that it would be still relatively easy for the Government to direct monies toward specific programs, even after the disallowance of a previous direction. These elements of the Bills appear to be another instance where the Government has sought to reduce scrutiny of its expenditure programs.